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Guy M. Hicks
General Counsel

'99 AUG 26 PM 4 14
August 26, 1999

CHIEF OF THE
EXECUTIVE SECRETARY

VIA HAND DELIVERY

David Waddell, Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37238

Re: *Petition of US LEC of Tennessee, Inc. for Arbitration Pursuant to 47 U.S.C. §
252(B)*
Docket No. 99-00447

567

Dear Mr. Waddell:

Enclosed are the original and thirteen copies of the Answer of BellSouth Telecommunications, Inc. Copies of the enclosed are being provided to counsel of record for all parties.

Very truly yours,

Guy M. Hicks

GMH:ch
Enclosure

FILE

BEFORE THE TENNESSEE REGULATORY AUTHORITY
Nashville, Tennessee

In Re:)	
)	
Petition of US LEC of Tennessee, Inc.)	Docket No. 99-00447
for Arbitration Pursuant to 47 U.S.C. §)	
252(B))	

ANSWER OF BELL SOUTH TELECOMMUNICATIONS, INC.

BellSouth Telecommunications, Inc. ("BellSouth") hereby answers the Petition of US LEC of Tennessee, Inc. ("US LEC"). The Petition seeks a ruling that dial-up access to the internet through an Internet Service Provider ("ISP") should qualify for reciprocal compensation under the terms of BellSouth's Interconnection Agreement with US LEC when such traffic originates with a BellSouth customer and passes through an ISP served by US LEC. There is no legal, factual or policy basis for such a ruling. As the Authority is aware, subsequent to its four decisions on the ISP issue, the Federal Communications Commission ("FCC") ruled that ISP traffic does not "terminate" on the CLEC's network.¹ Indeed, the FCC found that such traffic is "largely interstate," not local. Recently, state commissions in Massachusetts and New Jersey found that traffic to ISPs is not local, but is interstate.² Moreover, the District Court in North

¹ *In the matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996* (CC Docket No. 96-98); *In the matter of Inter-Carrier Compensation for ISP-Bound Traffic* (CC Docket No. 96-98), Declaratory Ruling in CC Docket No. 96-98 and Notice of Proposed Rulemaking in Docket No. 99-68 (Released February 26, 1999), at ¶ 12 (the "Declaratory Ruling").

² *Complaint of MCI WorldCom, Inc. against New England Telephone and Telegraph Company d/b/a Bell Atlantic-Massachusetts for breach of interconnection terms entered into under Sections 251 and 252 of the Telecommunications Act of 1996*, Order, Massachusetts D.T.E. 97-116-C (May 19, 1999) (Reversing an earlier order requiring payment of reciprocal compensation on dial-up internet access through an ISP); *In the Matter of the Petition of Global NAPS, Inc. for Arbitration of Interconnection Rates, Terms, Conditions and Related Arrangements With Bell Atlantic-New Jersey, Inc. Pursuant to Section 256(b) of the Telecommunications Act of 1996*, Decision and Order, N.J.B.P.U. (July 12, 1999) (ISP-bound traffic is interstate and not subject to reciprocal compensation obligations); Order, *BellSouth Telecommunications, Inc. v. MCIMetro Access Transmission Services Inc.* (W.D.N.C. May 20, 1999)(remanding order of NCUC which had required payment of reciprocal compensation for dial-up internet traffic in wake of FCC's determination that such traffic is not local). Copies of these decisions are attached as Exhibits A, B and C respectively.

Carolina remanded an order of the North Carolina Utilities Commission which had required payment of reciprocal compensation for ISP traffic in light of the FCC's determination that such traffic is not local.³

In the Massachusetts decision, the Department of Telecommunications and Energy reversed its earlier decision requiring payment of reciprocal compensation on dial-up internet access through an ISP in light of the FCC's decision. In its original Order, the Department held "that a call from a Bell Atlantic customer that is terminated by MCI WorldCom to an ISP is a 'local call' for purposes of the definition of local traffic in the Agreement [between MCI WorldCom and Bell Atlantic]."⁴ In the subsequent Order reversing its original decision, the Department held that the "Department based its October Order on a mistake of law, i.e. on an erroneous characterization of ISP-bound traffic and on a consequently false predicate for concluding that jurisdiction was interstate."⁵ The Department recognized that its original decision rested on the two-call theory, in which the ISP traffic terminates on the CLEC's network, and that consequently, its decision was "as a practical matter – a nullity."⁶

It is clear from these rulings that dial-up access to the internet through an ISP is not subject to the reciprocal compensation requirements of the Interconnection Agreement between BellSouth and US LEC. It is equally clear that the Authority's previous decision on this issue in

³ Order, *BellSouth Telecommunications, Inc. v. MCIMetro Access Transmission Services Inc.* (W.D.N.C. May 20, 1999)(remanding order of NCUC which had required payment of reciprocal compensation for dial-up internet traffic in wake of FCC's determination that such traffic is not local).

⁴ *Complaint of MCI WorldCom, Inc. against New England Telephone and Telegraph Company d/b/a Bell Atlantic-Massachusetts for breach of interconnection terms entered into under Sections 251 and 252 of the Telecommunications Act of 1996*, Order, Massachusetts D.T.E. 97-116-C (May 19, 1999), at 24.

⁵ *Id.* at 24.

⁶ *Id.* at 24.

Docket No. 98-00118 (*Petition of Brooks Fiber to Enforce Interconnection Agreement and for Emergency Relief*) should be reversed, and should not be considered dispositive of the issues in this docket. Accordingly, US LEC is not entitled to the relief it seeks in this proceeding, and the Authority should dismiss the Petition.

FIRST DEFENSE

The Petition fails to state a cause of action for which relief can be granted.

SECOND DEFENSE

In response to the specific allegations of the Petition, BellSouth states the following:

1. BellSouth asserts that T.C.A. §§ 65-4-119 and 65-4-124 speak for themselves. However, BellSouth denies that the Authority has jurisdiction over ISP traffic because such traffic is interstate in nature, the jurisdiction of which is vested with the FCC.
2. BellSouth admits that the Authority has jurisdiction over complaints pursuant to the statutory provisions cited in Paragraph 2. However, BellSouth denies that the Authority has jurisdiction over ISP traffic because such traffic is interstate in nature, the jurisdiction of which is vested with the FCC.
3. BellSouth asserts that T.C.A. § 65-4-124 speaks for itself. However, BellSouth denies that the Authority has jurisdiction over ISP traffic because such traffic is interstate in nature, the jurisdiction of which is vested with the FCC.
4. BellSouth admits the first sentence in Paragraph 4 of the Petition. With respect to the second sentence, BellSouth asserts that the referenced Authority Order speaks for itself.
5. BellSouth admits the allegations in Paragraph 5 of the Petition.
6. BellSouth admits the allegations in Paragraph 6 of the Petition.

7. BellSouth admits the allegations of the first sentence in Paragraph 7 of the Petition. BellSouth asserts that the terms of the interconnection agreement speak for themselves.

8. BellSouth admits the first three sentences in Paragraph 8 of the Petition. With respect to the remaining sentences, BellSouth asserts that the terms of the agreements speak for themselves.

9. BellSouth asserts that the terms of the agreements speak for themselves.

10. BellSouth admits that US LEC has billed it for compensation allegedly owed. BellSouth denies the remaining allegations in Paragraph 10 of the Petition. By way of further response, BellSouth denies that it is appropriate for carriers to establish reciprocal compensation arrangements for calls to ISPs because such calls are interstate in nature and thus not subject to reciprocal compensation obligations.

11. BellSouth asserts that the Public Service Commission Rulings referenced by US LEC in Paragraph 11 speak for themselves. BellSouth denies the remaining allegations in Paragraph 11.

12. BellSouth asserts that the Florida Public Service Commission order referenced by US LEC in Paragraph 12 speaks for itself. BellSouth denies the remaining allegations in Paragraph 12.

13. BellSouth asserts that the Alabama Public Service Commission order referenced by US LEC in Paragraph 13 speaks for itself. BellSouth denies the remaining allegations in Paragraph 13.

14. BellSouth asserts that the Florida Public Service Commission order referenced by US LEC in Paragraph 14 speaks for itself. BellSouth denies the remaining allegations in Paragraph 14.

15. BellSouth asserts that the Florida Public Service Commission order referenced by US LEC in Paragraph 15 speaks for itself. BellSouth denies the remaining allegations in Paragraph 15.

16. BellSouth asserts that the Florida Public Service Commission order referenced by US LEC in Paragraph 16 speaks for itself. BellSouth denies the remaining allegations in Paragraph 16.

17. BellSouth asserts that the Florida Public Service Commission order referenced by US LEC in Paragraph 17 speaks for itself. BellSouth denies the remaining allegations in Paragraph 17.

18. BellSouth asserts that the Public Service Commission orders referenced by US LEC in Paragraph 18 speak for themselves. BellSouth denies the remaining allegations in Paragraph 18. By way of further response, BellSouth states that calls to the Internet through ISPs that originate on BellSouth's network do not "terminate" on US LEC's network, as would be required for reciprocal compensation under BellSouth's interconnection agreement with US LEC. Such calls traverse US LEC's facilities to the ISP and the Internet and communicate with multiple destinations, often simultaneously, that may cross state and national boundaries; thus, ISP traffic cannot be considered "local". The FCC held that "we conclude, as explained further below, that the communications at issue here to not terminate at the ISP's local service, as CLECs and ISPs contend, but continue to the ultimate destination or destinations, specifically at an Internet website that is often located in another state."⁷ Because the traffic is interstate, it does not fall within the reciprocal compensation obligations of the Agreement.

⁷ *In the matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996* (CC Docket No. 96-98); *In the matter of Inter-Carrier Compensation for ISP-Bound Traffic* (CC Docket No.

19. BellSouth asserts that the Seventh Circuit decision speaks for itself. BellSouth denies the remaining allegations in Paragraph 19 of the Petition.

20. BellSouth asserts that the Seventh Circuit decision speaks for itself. BellSouth denies the remaining allegations in Paragraph 20 of the Petition.

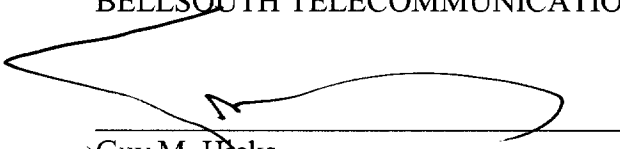
21. BellSouth denies the allegations in Paragraph 21 of the Petition.

22. BellSouth denies that US LEC is entitled to the relief it seeks. BellSouth specifically denies that there is any basis to convene a contested case proceeding to consider US LEC's complaint because the ISP traffic at issue is interstate traffic, the jurisdiction over which is vested exclusively with the FCC.

23. Any allegation contained herein not specifically admitted is hereby deemed to be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on August 26, 1999, a copy of the foregoing document was served on the parties of record, via facsimile, hand delivery, overnight or U. S. Mail, postage pre-paid, addressed as follows:

☒ Hand
☐ Mail
☐ Facsimile
☐ Overnight

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Gary Grefrath
US LEC Corp.
401 N. Tryon St., #1000
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A handwritten signature in black ink, appearing to read 'Gary Grefrath', is written over a horizontal line.